

ATTACHMENT C

PERSONAL SERVICES AGREEMENT

DIVERSION PROGRAMS

THIS AGREEMENT is by and between the City of Minneapolis (City) and CMC Justice Services, Inc., DBA the Conduct Modification Center (CMC), Box 11967, St. Paul, Minnesota, 55111-0967.

WITNESSETH:

WHEREAS, the City is authorized to prosecute petty misdemeanors, misdemeanors, and gross misdemeanors by statute and its Home Rule Charter; and

WHEREAS, said prosecutions are conducted through its City Attorney's Office; and

WHEREAS, the City desires to establish diversion programs for shoplifting offenders; and

WHEREAS, CMC has represented itself as a company experienced in conducting such programs.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. SERVICES TO BE PERFORMED BY CMC.

- A. CMC shall contact persons qualifying for diversion. Such persons shall receive the appropriate letter in Exhibit A, attached.
- B. Attendance and active involvement in a one day class shall be required of participants in the programs. Classes shall be taught at the Hennepin County Government Center, classrooms at acceptable metro area community colleges, or other similar classroom spaces by faculty trained for such purposes by CMC.

- C. Participants in the program shall be required to pay a program fee to CMC as set out in Exhibit B, attached.
- D. CMC shall administer the diversion program. CMC's administrative responsibilities shall include, but not be limited to:
 - 1) responding to inquiries from offenders regarding program requirements, procedures, and costs;
 - 2) hiring and training course instructors;
 - 3) using approved course materials;
 - 4) regulating course content, scheduling, and registration procedures;
 - 5) evaluating offender program performance;
 - 6) maintaining complete and accurate records concerning contacts with individual offenders, offender class attendance and performance, and payments by offenders.
- E. CMC shall notify the City in a timely fashion that an offender:
 - 1) chose not to participate in the diversion program;
 - 2) participated in, but failed to successfully complete the diversion program; or
 - 3) successfully completed the diversion program.
- F. CMC shall gather reliable information concerning recidivism for offenders who successfully complete the diversion program. The City Attorney's Office shall assist CMC in this effort to the extent possible.

- G. CMC will not conduct or administer the diversion program unless program-related income equals program-related expenses. If operation of the program results in financial loss, CMC shall bear such loss; neither the City nor the City Attorney's Office shall bear any financial responsibility for the diversion program.
- H. CMC shall keep complete and accurate records concerning operation of the diversion program. The City Attorney's Office shall have access to such records and may inspect such records upon reasonable notice. CMC shall retain such records for six years following termination of this Agreement. The six year retention period shall be automatically extended during the course of any administrative or judicial action involving the City of Minneapolis regarding matters to which the records are relevant, or until the City notifies CMC in writing that the records need no longer be kept.
- I. CMC shall comply with the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13, as amended, and all administrative rules promulgated pursuant thereto.
- J. CMC may publish statistical summaries concerning the operation of the diversion program and recidivism. Such summaries shall not identify individual offenders.

2. SERVICES TO BE PERFORMED BY THE CITY.

- A. The City Attorney's Office shall prosecute offenders who do not successfully complete the diversion program in cases that satisfy that office's charging guidelines. Upon conviction of such an offender, the City Attorney's Office shall request that the offender be required as a condition of probation to successfully complete the CMC program. For purposes of this Agreement, successful completion of the diversion or CMC program requires

that the offender attend and be actively involved in class and pay all applicable instruction fees and service charges.

- B. The City shall not establish a competing program offering the same or similar services as those described in this contract during the operation of this contract; nor will it cancel this contract for the purpose of establishing its own Program.

3. TERM OF AGREEMENT AND TERMINATION.

- A. This Agreement shall remain in effect until December 31, 1993, and shall be automatically renewable to December 31, 1994, unless either party gives notice thirty (30) days prior to December 1, 1993, that said party wishes to terminate this Agreement effective December 31, 1993.
- B. This contract may be terminated by either party for cause upon 30 days written notice to CMC or the authorized agent of the City. Cause is defined as either party's failure to fulfill the terms of this contract. This contract may be terminated by CMC upon 30 days written notice to the authorized agent of the City if CMC determines that it cannot conduct or administer the diversion program because program-related income does not equal program-related expenses. This contract may be immediately terminated by the City at any time if the City determines that CMC is acting, or has acted at any time during the term of this contract, in violation of state or federal law.

4. AMENDMENTS AND MODIFICATIONS.

All amendments or modifications to this Agreement must be reduced to writing and approved by both parties.

5. NO FINANCIAL LIABILITY TO CITY.

It is understood and agreed by and between the parties that the City has no financial liability with respect to the diversion programs. If the program does not succeed, CMC will bear all financial liability for all aspects of its operation.

6. HOLD HARMLESS AND INDEMNIFICATION.

CMC shall save and protect, hold harmless, indemnify and defend the City, its officers and employees against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses arising from or allegedly arising from, or resulting directly or indirectly from any professional errors and omissions and/or negligent or willful acts or omissions of CMC in the performance of this Agreement.

The City shall save and protect, hold harmless, indemnify and defend CMC, its officers and employees against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses arising from or allegedly arising from, or resulting directly or indirectly from any professional errors and omissions and/or negligent or willful acts or omissions of the City in the performance of this Agreement.

7. INDEPENDENT CONTRACTOR.

Nothing contained in this Agreement is intended to, or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. CMC shall at all times remain as independent contractor with respect to the services to be provided by it under this Agreement.

The City shall be exempt from payment of all unemployment insurance, FICA, retirement, life and medical insurance and workers' compensation insurance, as CMC is an independent

contractor. Payment of insurance premiums and tax withholding are strictly CMC's responsibility.

CMC may represent itself as the administrator of the diversion program. CMC shall not otherwise represent itself as part of the Minneapolis City Attorney's Office or as acting on behalf of the Minneapolis City Attorney's Office.

8. SUBCONTRACTS.

CMC shall not subcontract any portion of the work to be performed under this contract nor assign this contract without the prior written approval of the authorized agent of the City. CMC shall ensure and require that any subcontractor agrees to and complies with all of the terms of this contract. Any subcontractor of CMC used to perform any portion of this contract shall report to and bill CMC directly. CMC shall be solely responsible for the breach, performance, or nonperformance of any subcontractor.

9. DATA PRACTICES.

CMC, its agents, employees and any subcontractors of CMC in providing all services hereunder, agree to abide by the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as amended, and Minn. Rules promulgated pursuant to Ch. 13. CMC agrees to maintain in strict confidence all records and data to which it is privy as part of this Program. It agrees not to reveal any private or confidential information to any sources not approved by the City. The City agrees to provide CMC with information it may need to perform its contracted functions, if said information may be lawfully provided. Any files or other information provided by the City will remain its property. All private or confidential information collected or generated by CMC will be available to the City upon request. All CMC files will be stored in a secure place. Once the Program files are of no use and the City has approved their destruction they will be destroyed.

10. COMPLIANCE WITH LOCAL LAWS.

CMC shall comply with all applicable laws, ordinances, statutes and codes of the federal, state and local governments including those dealing with affirmative action and nondiscrimination.

11. NOTICES.

Any notices required to be given under this Agreement shall be given as follows:

To the City: Mitchell L. Rothman, Esq.
Deputy City Attorney
Office of the City Attorney
A-1700 Government Center
300 South Sixth Street
Minneapolis, MN 55487-0170

To CMC: CMC Justice Services, Inc.
Conduct Modification Center
Box 11967
St. Paul, MN 55111-0967

All notices must be mailed by prepaid first class United States mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf respectively by their proper officials as of the date first written below.

CITY OF MINNEAPOLIS

Dated: _____

By _____
Mayor

Attest _____
City Clerk

Countersigned _____
Finance Officer

Approved as to form
and execution:

Assistant City Attorney

CMC JUSTICE SERVICES, INC.

By _____
Its _____

Dated: _____

EXHIBIT A
SHOPLIFTING LETTERS

EXHIBIT B

FEE SCHEDULE

Offenders participating in the diversion program shall be required to pay CMC a program fee that will vary with the offender's assets and income, as indicated below. Persons who fail to provide a good faith showing of ability to pay will be presumed able to pay the regular program fee.

Regular Program Fees

Shoplifting Class: \$85.00

Persons meeting the asset & income tests below will pay lesser fees.

I. ASSETS

- A. Definition.-Must be readily converted to cash by sale or loan without jeopardizing home or employment.
- B. Cash.-Less than \$500.00
- C. Property.
 - 1. Exemptions:
 - a. Home.
 - b. One car.
 - c. Most other property is considered an asset unless conversion to cash would create an undue hardship.

II. INCOME

- A. Single (does not include persons who are under 21 and living at home)
 - 1. Less than \$435.00 per month: \$10.00 program fee.
 - 2. \$435.00 to \$870.00 per month: \$30.00 program fee.
- B. Married (an additional \$108.00 per month will be allowed per dependent, spouse not included)
 - 1. Less than \$435.00 per month: \$10.00 program fee.
 - 2. \$435.00 to \$870.00 per month: \$30.00 program fee.